IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DARIUS HINES	§	
	§	
Vs.	§	**CIVIL ACTION NO. 2:15-CV-442**
	§	
TYSON FOODS, INC.	§	

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Darius Hines, Plaintiff, and files this amended Complaint against Tyson Foods, Inc. and for causes of action would respectfully show as follows:

PARTIES

1. Plaintiff is an individual residing in Mansfield, Louisiana.

2. Defendant Tyson Foods, Inc. is a corporation organized under the laws of the state of Delaware with its principal place of business in Springdale, Arkansas. Tyson Foods, Inc. is properly before the Court.

STATEMENT OF JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court.

4. This court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) as there is diversity of citizenship among the parties, in that each Defendant is now and was at the time the action was commenced diverse in citizenship from the Plaintiff. Furthermore, the amount in controversy exceeds the sum of $75,000.00, exclusive of interests and costs.

5. Venue in this Court is proper under 28 U.S.C. §1391 (b)(1) & (c)(2) as Defendant is subject to this Court's personal jurisdiction by having substantial assets located within this district. Lastly, this Court has personal jurisdiction over Defendants because they regularly

conduct business in this district and they derive substantial income from this district.

FACTUAL BACKGROUND

6. This case arises out of a workplace injury on January 7, 2015 at Defendant's Center, Texas chicken processing plant. Plaintiff had been employed at the facility for approximately six months as a line worker assisting with the de-gutting of chickens. On or about January 1, 2015 Defendant instructed Plaintiff to go outside and unlatch chicken cages that were secured to a flatbed trailer. Plaintiff was ordered to do this work for approximately an hour per day leading up to the incident of January 7, 2015. Plaintiff, however, was never formally trained, supervised, or instructed on how to unlatch the chicken cages. He was merely told to "do it."

7. While unlatching a double stack of chicken cages secured by a spring loaded strap and hook bound to the trailer, a "cheater bar" inserted into a trailer-mounted winch popped upwards and slammed into Plaintiff's right cheek and eye socket area. This cheater bar was later replaced by a longer, heavier, and curved bar designed specifically for this task. Plaintiff was taken to Defendant's nurse station where he was merely given a band-aid and sent home. Later, while at his local ER, it was determined that the injury caused severe facial trauma including damage to his eye socket, cheek bone, and jaw bone. A later surgery required a metal plate to be surgically inserted. Additionally, two of his lower teeth were required to be extracted. Plaintiff will require multiple tooth implant replacements. Plaintiff is still treating for these injuries.

CAUSE OF ACTION – NEGLIGENCE

8. Defendant Tyson has a non-delegable duty to provide a safe workplace environment for all of its employees. This also includes the duty to properly train, supervise, warn of hazards, hire competent co-employees, and to provide necessary instrumentalities with

which to work for all of its employees. Due to the failure of Tyson to properly train, supervise, warn, provide necessary instrumentalities, and assistant Plaintiff with the work tasks he was required to do, this injury occurred. This negligence on the part of Defendant Tyson was a proximate cause and cause-in-fact of the injuries sustained by Plaintiff.

DEFENDANT IS A "NONSUBSCRIBER"

9. Defendant may not assert in this action the following common law defenses: (1) Plaintiff was guilty of contributory negligence; (2) Plaintiff assumed the risk of injury or death; or (3) Plaintiff's injury or death was caused by the negligence of a fellow employee to defeat Plaintiff's action or to limit Plaintiff's recovery in this case. The Texas Supreme Court adopted this interpretation of the Texas Labor Code in *Kroger v. Keng*, 23 S.W.3d 347 (Tex. 2000), holding that such an employer is responsible for all of employee's damages, if they are found only 1% negligent. This is the risk of "going bare" in Texas.

DAMAGES

10. As a result of the occurrence in question, Plaintiff has sustained severe injuries and damages. As a result of these injuries, Plaintiff is entitled to recover compensatory damages in an amount that exceeds the jurisdictional minimum of this court for each of the following elements:

(a) past and future medical expenses;

(b) the lost earnings and loss of earning capacity sustained in the past; and loss of earning capacity that, in reasonable probability, will be sustained in the future;

(c) pain and suffering, past and future;

(d) mental anguish sustained in the past; and mental anguish that, in reasonable probability, will be sustained in the future;

(e) physical impairment, past and future;

(e) pre-judgment and post-judgment interest at the highest rates allowed by law.

DEMAND FOR JURY

11. Plaintiff hereby makes demand for his right to a trial by jury afforded by the United States Constitution and tenders the requisite fee to the clerk concurrent with the filing of this Original Complaint.

PRAYER

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer and that on final trial Plaintiff have and recover:

a. Judgment against Defendant, for compensatory damages, including in an amount that exceeds the minimum jurisdictional limits of the Court more fully set forth above;

b. Prejudgment and post-judgment interest as provided by law;

c. Costs of suit; and

d. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Josh B. Maness

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). A copy of this notice was served on all counsel via the Court's CM/ECF system.

By: ____Josh B. Maness____